Response of the Netherlands – European Commission Green Paper – Retail Financial Services

This is a joint response of the Dutch Ministry of Finance, the Dutch Authority for Consumers and Markets, the Dutch Authority for the Financial Markets and the Nederlandsche Bank, each institution with their own role and responsibilities.

Please note that this reaction is subject to a parliamentary reserve.

General remarks

The Netherlands **strongly supports the objective of promoting the internal market** by removing unjustified barriers in the internal market, because of concrete benefits it can generate for consumers and business. Therefore we should always be looking for ways to promote the internal market.

A general observation, before answering the questions one by one, is that impediments for cross-border provision of services or purchase of financial products are often of a non-regulatory nature, such as cultural differences (e.g. ways of doing business) and the different working languages within the Union. Also, proximity and personal contact often play an important role. Furthermore, financial institutions run into differences in national welfare systems, differences in contract law, insolvency law and fiscal legislation.

In our response to the green paper, we will emphasise four points:

1. The Netherlands believes strongly that, **before new measures are proposed, a good analysis of the problem in a particular market has to be made**. We think it important to analyse in detail the different markets that are being addressed in this green paper, in order to find out what barriers can be removed and how this could best be done. Sharing best practices would be useful in this respect.
2. The **effects of recent regulation of retail financial services should be evaluated** before developing new regulation.
3. **Consumer protection should not fall below the current level** when harmonising national legislation.
4. Regulatory **measures should be technologically neutral when possible**. It is important to make regulation 'technology neutral' by principle-based requirements that foster innovation in the market for adhering to these principles in an efficient and effective manner. A good example is to avoid requiring the use of paper as information carrier. Technology neutral regulation also helps to avoid creating an unlevel playing field or undesirable loopholes.

Again, we are strongly in favour of improving the internal market in the Union, as we believe it can deliver concrete benefits for consumers and business. In order to realise those benefits, we propose that the European Commission provides a deeper analysis to identify opportunities to improve the internal market. On concrete issues, sharing best practices might be useful as well.

<u>Response to questions in the green paper – Retail Financial Services</u>

Question 1a
If you are a firm… For which financial products could improved cross-border supply increase competition on national markets in terms of better choice and price?

Please tick all relevant boxes:

	Current accounts
	Saving accounts
	Mortgage credit
	Consumer lending
	Payment services (e.g. mobile payments)
	Car insurance
	Life insurance
	Private health insurance
	Saving and investment products
	Other
X	Don't know / no opinion / not relevant

Question 1b
If you are a consumer or consumer organisation... Which financial products would you be most interested to buy cross-border from other Member States if they suited your needs better than products available on your local market?

Please tick all relevant boxes:

	Current accounts
	Saving accounts
	Mortgage credit
	Consumer lending
	Payment services (e.g. mobile payments)
	Car insurance
	Life insurance
	Private health insurance
	Saving and investment products
	Other
X	Don't know / no opinion / not relevant

Question 2a
If you are a firm... what are the barriers which prevent firms from directly providing financial services cross-border?

Please tick all relevant boxes:

Language
Differences in national legislation
Additional requirements imposed by national regulators
Impossibility of verifying the identity of cross-border customers
Lack of knowledge of other markets
Cost of servicing clients cross-border (without local infrastructure)
No EU passport available
Other
X Don't know / no opinion / not relevant

Question 2b
If you are a consumer or consumer organisation...what are the barriers that prevent consumers from directly purchasing products cross-border?

Please tick all relevant boxes:

Language
Territorial restrictions (e.g. geo-blocking, residence requirement)
Differences in national legislation
Lack of knowledge of the offer of products in another Member State
Lack of knowledge of redress procedures in another Member State
X Other
Don't know / no opinion / not relevant

Answer

[The general remarks will be made in this answer box.]

Question 3
Can any of these barriers be overcome in the future by digitalisation and innovation in the FinTech sector?

X Yes
No
Don't know / no opinion / not relevant

Question 3.1
Please specify which of these barriers can be overcome in the future by digitalisation and innovation in the FinTech sector:

Please tick all relevant boxes:

X Language
X Territorial restrictions (e.g. geo-blocking, residence requirement)
Differences in national legislation
Additional requirements imposed by national regulators
X Impossibility of verifying the identity of potential cross-border clients
X Lack of knowledge of other markets
X Lack of knowledge of the offer of products in another Member State
X Lack of knowledge of redress procedures in another Member State
X Cost of servicing clients cross-border (without local infrastructure)
No EU passport available
X Other
Don't know / no opinion / not relevant

Please specify what other barriers can be overcome in the future by digitalisation and innovation in the FinTech sector:

Answer

Innovation in information technology can reduce barriers that result from geographical distance and information and transaction cost. For consumers, the costs of searching, choosing and switching may decline due to digitalisation. For firms, distribution costs may go down. Standardisation in authentication and identification throughout the EU can help overcome a relevant barrier for cross-border demand for and provision of financial services.

Innovation may not remove all relevant barriers for consumers, as these barriers are manifold and may fall to a large extent outside the scope of financial regulation. Examples are cultural differences, language, fiscal conditions, operational and registry differences, and divergence in civil law (insolvency law, contract law).

Question 4
What can be done to ensure that digitalisation of financial services does not result in increased financial exclusion, in particular of those digitally illiterate?

Please tick all relevant boxes

X Improved access to digital means
X Digital training offered by the financial industry
X Digital training offered by NGOs
Digital training offered by public authorities
X Other
Don't know / no opinion / not relevant

Please specify what else can be done to ensure that digitalisation of financial services does not result in increased financial exclusion, in particular of those digitally illiterate:

Answer

The Netherlands considers financial inclusion an important issue and given the provisions in the United Nations Convention on the Rights of Persons with Disabilities[1], we think it is our duty to take into account the rights and interests of specifically vulnerable groups that risk exclusion, such as elderly people, people with functional impairments and lower-educated/unemployed people. Financial exclusion is not just a problem of new technology and can e.g. also be the consequence of illiteracy. It is very important that all vulnerable groups continue to have good access to financial products and services that are relevant for them, including digitalized financial products and services.

In the Netherlands initiatives have been taken to address this question. Online services (e.g. www.steffie.nl) have been developed to support vulnerable groups to use their financial products and services. We consider it very important that online financial products and services and mobile financial applications are, and remain, sufficiently accessible and understandable. A number of Dutch financial service providers offer tailored financial products and services and/or information specifically aimed to foster accessibility of vulnerable groups. Some institutions make special aids available, such as card readers for online banking with extra-large keys, an oversized screen and speech function or spoken support.

The Dutch National Forum on the Payment System strives for barrier-free EU-wide access to payment terminals and innovative payment solutions for all, preferably through standardization. An EU-platform, called Pay-Able, is under development to tackle this problem (Pay-Able is already registered in the EU Transparency Register). The platform has the support of several umbrella organizations of vulnerable groups, such as AGE Platform Europe and the European Blind Union. Pay-Able has also given a specific reaction on the matter of financial accessibility on the consultation of the proposed European Accessibility Act (COM (2015)615 final).

As such, financial inclusion is a well developed policy area in the Netherlands. While we are supportive of European initiatives in this area, we believe that we should avoid administrative measures for Member States that already have elaborate policies in this area in place. We would therefore suggest to share best practices as a first step.

[1] Article 9 of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) states that vulnerable groups, like persons with disabilities, should be able to live independently and to participate fully in all aspects of life on an equal basis with others. The EU is a signatory of UN CRPD and has a duty to fully adhere to its articles. Being able to conduct financial services independently is an important aspect of daily life for all European citizens.

Question 5
What should be our approach if the opportunities presented by the growth and spread of digital technologies give rise to new consumer protection risks?

Answer

Digital technologies are shaping the way products and services are offered to consumers. Online and mobile service concepts are changing the way consumers pay, save, lend, invest, insure but also compare and buy financial products and services. An increase in competition could lead to greater diversity of products for consumers, at a lower cost. However, not all technologies are naturally - and only - introduced in the best interest of clients. It is therefore important to strike a balance between fostering financial innovation while safeguarding an appropriate level of consumer protection at the same time.

When new risks are identified, a careful analysis should form the basis for possible new actions towards mitigating these consumer protection risks. The following questions will need to be addressed:

(1) Will the perceived problem be solved by the market or not?
(2) If the market fails and government intervention is deemed appropriate and necessary, it is important to confirm that existing institutions (e.g. supervisory authorities) or legislation do not yet already address this issue.
(3) We should then look into options for introducing (enhanced) legislative measures. The choice for intervention would preferably be based on empirical research identifying the most effective way to address a problem. Sharing best practices can also be a useful step in this process.

The harmonisation of legislation at the European level should not lead to consumer protection below the current level in individual member states.

Question 6
Do customers have access to safe, simple and understandable financial products throughout the European Union?

X Yes
No
Don't know / no opinion / not relevant

Please explain your answer to question 6:

Answer

[To provide additional written comments on this question for technical reasons answer 'YES" was chosen over the preferred answer "Don't know / no opinion / not relevant". ACM, AFM, DNB and the Dutch Ministry of Finance would like to stress that in order to be able to submit our contribution below, we had to tick the 'yes box' above.]

To limit our answer to The Netherlands, the Authority for the Financial Markets supervises product approval and review processes in order to ensure that consumers are offered useful, safe and understandable financial products for the target group of the specific product. This is not the case in all member states. We welcome that the Markets in Financial Instruments directive (Mifid) II also allows for having supervision on the product approval procedure at the Member State level.

To safeguard the access of consumers to safe, simple and understandable financial products, good quality advice can form part of the solution, but, obviously, incentives for advisors have to be organised so that they are paid by the client and not by the product provider. This ensures that advisors are guided by their clients interest instead of by the commercial goal to sell products.

Question 7

Is the quality of enforcement of EU retail financial services legislation across the EU a problem for consumer trust and market integration?

X Yes
No
Don't know / no opinion / not relevant

Please explain your answer to question 7:

Answer

Even after completion of the European Single Rulebook, there is still room for national differences and national authorities still have discretionary room. Supervisory convergence is an important instrument for national authorities to coordinate interpretations and actions, especially through the European Supervisory Authorities. We think that cross-sectoral supervision on financial institutions, products and markets would be a further improvement, for example, in the field of supervision of the conduct of financial institutions.

It is important to consumers that supervisors in another member state uphold to at least the same standards that they are used to in their home market. The impact on consumer trust can be negative when supervision fails to realise the level of protection a customer is used to in his home market. The Netherlands has a relatively high level of consumer protection and strongly feels that harmonisation of these rules should not lead to lower standards in this regard. We would be very interested in sharing best practices.

The Dutch horizontal supervisory approach towards conduct of market participants and harmonising consumer protection across sectors can in our view serve as a useful example for European supervisory practices.

Question 8
Is there other evidence to be considered or are there other developments that need to be taken into account in relation to cross-border competition and choice in retail financial services?

Answer

Next to removing barriers to entry, attention should be paid to exit behaviour of foreign market participants in case of changing market conditions. Consumers should be adequately protected in case a foreign bank or insurer withdraws from certain markets. Clients should be well-informed about the continuation of service and the consequences of the exit of the provider. Options for redress and to file consumer complaints should remain open.

Question 9
What would be the most appropriate channel to raise consumer awareness about the different retail financial services and insurance products available throughout the Union?

Please tick all relevant boxes:

X Independent pan-European comparison websites, including the information on cross-border products.
  Information campaigns by regulators
X Information campaigns by consumer organisations
X Marketing campaigns by financial services providers or their associations
X Financial intermediaries empowered to offer cross-border financial products
X Other
  Don't know / no opinion / not relevant

Please specify what other channel would be the most appropriate to raise consumer awareness about the different retail financial services and insurance products available throughout the Union:

Answer

First of all, the marketing of financial products and services can be left to the industry that provides them. Financial institutions are best placed to raise awareness of their products to convince the consumer to buy their products by providing relevant information for the potential purchase.

Secondly, comparison mechanisms for financial services and products that are available in across borders within the European Union can guide consumers towards providers from other Member States. It can be helpful to consumers if services and products are easy to find and to compare in terms of content and price. A way to enhance comparability of products can be to standardise definitions of products with similar features. In the Netherlands, comparison websites play an increasingly important role in consumers' decision processes. It is an important tool for choosing health care insurance policies and providers. User-friendliness is crucial for its uptake and thus its effect on consumer behaviour. In our view, private companies are best placed to develop this sort of online environments. Ideally, possibilities to compare are combined with possibilities to find out which products or services are suitable. The European Commission could explore possibilities to enhance and promote these online services by ensuring central access to machine readable and standardized data on available services and products.

Thirdly, if considering further steps, it should be empirically tested what actually easily reaches the consumer and effectively helps him. We are not unconditionally in favour of information campaigns. In the Netherlands, extensive research has shown these campaigns often have limited effects on consumer behaviour[2]. Assumptions that people notice information from the campaigns and that people listen if sensible arguments are communicated, and that behaviour will change often appeared to be false. If an information campaign is still considered, it is crucial to have clear behavioural purposes and clear ideas how the information will be appealing and actually used. In the Netherlands, methods have been developed, based on behavioural insights, to increase the likeliness that information campaigns are reaching consumers and having an effect on their behaviour.

[2] http://www.wrr.nl/fileadmin/nl/publicaties/PDF-verkenningen/De_menselijke_beslisser.pdf, p. 185 (in Dutch)

Question 10

What more can be done to facilitate cross-border distribution of financial products through intermediaries?

Answer

Intermediaries may provide a useful channel for the cross-border distribution of financial products. However, it is not up to Member States to facilitate a specific channel as this should be determined through competition and entrepreneurship. The removal of barriers shouldn't lead to regulatory arbitrage on consumer protection standards. that have advanced consumer protection in place specifically regarding financial intermediaries.

In the Netherlands, we have strict regulation of intermediaries in order to protect the consumer interest. Firstly, a ban on commissions has been introduced, which will be evaluated in 2017. The ban cuts the financial links between banks/insurance companies and intermediaiaries, removing miss-selling incentives. This way, advice and intermediation are tailored to the needs of consumers, and not to that of financial institutions seeking to sell their products. We think this could serve as a best practice allowing intermediaries to function as a channel for cross-border distribution while safe-guarding the best interests of the consumer.

In addition, the Netherlands have elaborated rules to ensure a minimum level of professional skills and necessary knowledge for advisors.

Question 11
Is further action necessary to encourage comparability and / or facilitate switching to retail financial services from providers located either in the same or another Member State?

X Yes, at Member State level
Yes, at EU level
No
Don't know / no opinion / not relevant

If further action is necessary, what action and for which product segments?

Answer

[In order to be able to provide additional written comments - see below - on this question for technical reasons answer "YES" was chosen over the preferred answer "Don't know / no opinion / not relevant". ACM, AFM, DNB and the Dutch Ministry of Finance would like to stress that the option ticked above is therefore not their answer to this question in the green paper.]

Facilitating comparability and switching is an important way to increase market discipline by making consumers more aware of their options and making it easier for them to rise to the occasion. In general, the possibilities for consumers to compare and switch between financial products of different providers in the same or other Member States are limited due to variation in product offerings and complexity of product conditions. It requires careful analysis to find out where product complexity and variation originates from; for instance, to find out whether complexity and variation is a function of differences in consumer preferences or not. Moreover, we think it useful to first overview existing or upcoming policy initiatives to analyse their effectiveness before new regulation is considered both at the European and the national level.

<u>Bank accounts</u>
With regard to comparability and switching of bank accounts, it is essential to first establish the effects of the Payment Accounts Directive. Depending on the findings regarding bank accounts it may be useful to identify further steps. In the Netherlands, consumers can make use of the 'Interbank Payment System Switching Service' if they switch to another Dutch provider. This service exists since 2004 and ensures that direct debits and payments are automatically forwarded to the new payment account for a period of thirteen months. However, the annual number of consumers using this service is relatively low. This is in part because a lot of consumers are not aware that this service exists.[3] Higher awareness of this service is a necessary but not a sufficient condition for switching by consumers.

From the consumer's perspective, account number portability (ANP) could further lower the barriers for consumers to switch between providers for bank accounts and payment services. ANP on a European level is not easily implemented and requires a good cost-benefit assessment before considering further steps. So far, rough assessments have been made but more information is needed. DNB published a working paper on the reasons/incentives for consuments to (not) switch between banks.[4]

In the Netherlands several studies are being carried out into the topic of ANP. Furthermore, several studies are in preparation:

1. The Dutch Authority for Consumers and Markets (ACM) is currently analysing benefits of European ANP. The results are expected May or June 2016.
2. DNB is analysing the technological possibilities for NL-IBAN-portability.
3. The Dutch Payments Association conducts a fourth evaluation of the switching service in the Netherlands. The results of the last two studies are expected before the summer 2016 and will be discussed in the National Forum for Retail Payments.

We are happy to share the findings of these studies with the Commission and engage in further discussion on the topic of facilitating switching between providers in the market for bank accounts.

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[3] http://www.dnb.nl/nieuws/nieuwsoverzicht-en-archief/dnbulletin-2015/dnb335682.jsp
[4] Working paper DNB – Banking products, you can take them with you, why don't you? Gepubliceerd op de DNB-site op 29 december 2015.

Savings accounts
In the Netherlands, there is a high number of consumers who have never switched providers even though differences exist in the level of the interest rate on savings accounts. The lack of awareness of the Dutch deposit guarantee scheme can partially explain this consumer inertia, as consumers possibly are not switching because they unjustly believe that their money will not be safe with a new provider.[5]

It is therefore important that banks can communicate to consumers that the guarantee scheme is applicable to them and what its scope is.

[5] ACM (2014), p.73.

Question 12
What more can be done at the EU level to tackle the problem of excessive fees charged for cross-border payments (e.g. credit transfers) involving different currencies in the EU?

Please tick all relevant boxes

	Aligning cross-border and domestic fees
	Before every transaction, consumers should be clearly informed what fee they will be charged and for comparison should be presented the fee for national payment
	Before every transaction consumers should explicitly accept the fee they will be charged
X	No further action is needed
	Other
	Don’t know / no opinion / not relevant

Please specify what else can be done at the EU level to tackle the problem of excessive fees charged for cross-border payments (e.g. credit transfers) involving different currencies in the EU:

Answer

[In order to be able to provide additional written comments on this question for technical reasons answer "Other" was chosen even though we have no view to whether further action is needed and if so what it should be.]

We would like to gain a better understanding of the problems encountered by consumers regarding cross-border payments, before a discussion of regulatory measures is in order. If these problems warrant regulation, it is important to identify effective measures based on empirical testing. The context in which transactions take place may render further transparency requirements relatively ineffective. This should be carefully analysed in order to ensure that consumers are effectively protected.

Notwithstanding the aforementioned issues, cross-border transactions involving currency pairs face currency exchange risk and operate outside the SEPA standards. These types of transactions also require special systems and applications at banks, payment institutions and other market parties.

Question 13
In addition to already existing disclosure requirements, are there any further actions needed to ensure that consumers know what currency conversion fees they are being charged when they make cross-border transactions?*

> ** Articles 59 and 60(3) of the revised Payments Services Directive (PSD2): European Parliament legislative resolution of 8 October 2015 on the proposal for a directive of the European Parliament and of the Council on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC (COM(2013)0547 – C7-0230/2013 – 2013/0264(COD))*

Please tick all relevant boxes

	No further action is needed
	Before every transaction, consumers should be clearly informed what conversion fee they will be charged and for comparison should be presented the average market conversion fee (e.g. provided by the European Central Bank)
	Before every transaction consumers should explicitly accept the conversion fee they will be charged
X	Other
	Don't know / no opinion / not relevant

Please specify what other further actions needed to ensure that consumers know what currency conversion fees they are being charged when they make cross-border transactions:

Answer

We would like to gain a better understanding of the problems encountered by consumers regarding cross-border payments, before discussing regulatory measures is in order. If these problems warrant regulation on top of what is already required by articles 59 and 60 of Payment Services Directive 2.

It is important to identify effective measures based on empirical testing. The effect of transparency requirements should be tested before regulation is introduced. The context in which the transaction takes place may render further transparency requirements relatively ineffective. This should be carefully analysed in order to ensure that consumers are effectively protected.

Question 14
What can be done to limit unjustified discrimination on the grounds of residence in the retail financial sector including insurance?

Answer

Unjustified discrimination on the grounds of residence is already unlawful and should be prevented. We see two difficulties in this respect: 1. It is unclear how effective enforcement against unjustified discrimination by the relevant authorities is organised. 2. It may not always be obvious whether discrimination is justified or not. An inventarisation of existing legal requirements that taken residence into account, might be useful in this respect.

1. The justification of discrimination is bound to legal limits. Our suggestion is to provide an overview of 'justified discrimination on the grounds of residence'.
2. The current set-up of effective enforcement mechanisms by national authorities can be clarified for unjustified discrimination on the grounds of residence.

'Paper proof' is often legal requisite in order to establish residence. We consider this requirement in conflict with the objective of promoting digitalisation. Regulation should strive to be technologically neutral and not state a requisite for a certain (paper or another) format.

Question 15
What can be done at the EU level to facilitate the portability of retail financial products – for example, life insurance and private health insurance?

Please tick all relevant boxes

Prohibit insurance firms from geographically limiting cover to the country where the policy-holder is living
Encourage insurance firm to sell insurance products with wide geographical coverage
X Other
Don't know / no opinion / not relevant

Please specify what else can be done at the EU level to facilitate the portability of retail financial products:

Answer

The case for facilitating portability depends on the product market. Portability differs greatly between financial services. It requires careful analysis of every product market to identify barriers to portability. It is unclear what problem the Commission seeks to solve in this context. Please find below a few considerations regarding the markets mentioned in the question. This may form the basis for the formulation of a starting point for a further analysis that then needs to be done for all member states.

Basic **health insurance,** which is mandatory for Dutch citizens, provides coverage in all EU-countries. When a European citizen moves to another member state the acquis states if the current national health insurance policy is portable, as health insurance is a designated social insurance in the Netherlands. Clear criteria on these insurances form part of the acquis applicable to the freedom of movement, dictating the instances which healthcare insurance system is applicable for a European citizen that lives in another member state. The additional health care insurance is voluntary, but similar rules apply in this regard.

For **life insurance** an important barrier is of fiscal nature. When life insurance premiums paid are deductable for income tax, and tax is due in the pay-out phase (such as is the case for many pension insurance products in the Netherlands) portability is limited by the tax liability.

Portability of **other insurance products** seems to imply that products have a wider geographic coverage. A wider (geographic) coverage of insurance products may influence insurance premiums. A cost-benefit analysis is necessary beforehand to establish that portability of these products is beneficial for consumers. In other words, the effect on premiums and choice for consumers needs to be analysed before decisions are made on extension of coverage.

Question 16
What can be done at the EU level to facilitate access for service providers to mandatory professional indemnity insurance and its cross-border recognition?

Answer

We are not aware of any problems regarding the cross-border recognition of professional indemnity insurance. Therefore, we don't think that steps are necessary in this area.

Question 17
Is further action at the EU level needed to improve the transparency and comparability of financial products (particularly by means of digital solutions) to strengthen consumer trust?

Yes
No
X Don't know / no opinion / not relevant

Please explain your answer to question 17:

Answer

[ACM, AFM, DNB and the Dutch Ministry of Finance would like to stress that in order to be able to provide additional written comments on this question for technical reasons answer "NO" was chosen over the preferred answer " Don't know / no opinion / not relevant".]

New rules have been introduced the past years to improve transparency and comparability (Mortgage Credit Directive, Payment Accounts Directive, Payment Services Directive, Insurance Distribution Directive and the Packaged Retail and Insurance-based Investment Products directive). The effects of these (recent) directives must be carefully evaluated prior to deciding on possible further action. Furthermore, new rules or further action should be based on empirical testing of the effectiveness of policy measures. Behavioural insights teach us that consumers do not necessarily make better choices when they have more information. In order to be effective, policy making has to start from the real decision-making process of consumers and not from assumptions about how they (should) behave.

Intermediary distribution can help consumers as well, provided that the incentives to sell products are removed by banning commissions and that there are minimum standards for advice.

Question 18
Should any measures be taken to increase consumer awareness of FIN-NET and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation?*

X Yes
No
Don't know / no opinion / not relevant

Question 18.1
If measures should be taken to increase consumer awareness of FIN-NET and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation, what of the following could be done to ensure the above?

Please tick all relevant boxes

X Better inform consumers about the availability of out-of-court settlement schemes for cross-border disputes
X Provide out-of-court settlement schemes with effective means to solve consumers' cross -border problems
Ensure that out-of-court settlement schemes operate according to the same rules and offer equally effective means to help consumers across the EU
X Ensure that out-of-court settlement schemes operate independently from the financial industry
X Other
Don't know / no opinion / not relevant

Please specify what else could be done to increase consumer awareness of FIN-NET and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation:

Answer

Alternative Dispute Resolution (ADR) is *an alternative* to going to court, but it should never prohibit people from going to court. ADR is regulated, not just for the financial sector. We currently have insufficient information to assess the possible improvements of international cooperation and consumer awareness in the case of ADR. It would be useful to share best practices in the area of ADR (schemes).

In the Netherlands, we will evaluate the functioning of the ADR-scheme for the financial sector (KiFiD) this spring. We will share the results of this evaluation with the European Commission.

Question 19
Do consumers have adequate access to financial compensation in the case of miss-selling of retail financial products and insurance?

X Yes
No
Don’t know / no opinion / not relevant

Please explain your answer to question 19:

Answer

[ACM, AFM, DNB and the Dutch Ministry of Finance would like to stress that in order to be able to provide additional written comments on this question for technical reasons answer "YES" was chosen over the preferred answer " Don’t know / no opinion / not relevant".]

Consumers can go to the national ADR-scheme (KiFiD in the Netherlands) or to court in the case of miss-selling. Before going to ADR, consumers have to file their complaint at the financial service provider. Introducing an obligation for financial service providers to provide for an easily accessible standard complaint process for consumers would be an interesting idea that deserves further consideration.

Currently, legislation to create the possibility for collective action is being prepared in the Netherlands. It would be interesting to see how mass miss-selling would be treated in other Member States. An overview of alternative approach and sharing best practices might be useful.

Question 20
Is action needed to ensure that victims of car accidents are covered by guarantee funds from other Member States in case the insurance company becomes insolvent?

	Yes
X	No
	Don't know / no opinion / not relevant

Please explain your answer to question 20:

Answer

We are not aware of any cases where this problem materialised. The Netherlands has bilateral agreements with 20 countries providing for this problem.

Question 21
What further measures could be taken to enhance transparency about ancillary insurance products and to ensure that consumers can make well-informed decisions to purchase these products?

Answer

To improve transparency on ancillary services the IDD has already introduced new rules. We should wait for considering further actions until the effects of this directive have been evaluated and remaining problems have been clearly identified. Furthermore, new rules or further action should be based on empirical testing of effectiveness. Behavioural insights teach us that consumers do not necessarily make better choices when they have more information. In order to be effective, policy making has to start from the real decision-making process of consumers and not from assumptions about how they (should) behave.

Question 21.1
With respect to the car rental sector, are specific measures needed with regard to add-on products?

Yes
No
X Don't know / no opinion / not relevant

Question 22
What can be done at the EU level to support firms in creating and providing innovative financial digital services across Europe, with appropriate levels of security and consumer protection?

Answer

It is important that European and national institutions (legislators and regulators) actively engage in dialogue with relevant stakeholders. The speed and complexity of innovation require knowledge sharing between authorities, financial institutions and FinTech companies in order to get a better understanding and in order to monitor whether existing norms suffice regarding new situations in order to be able to make timely adjustments, where necessary.

Building understanding at the EU level.
It is critical to have a full understanding of financial innovation and how they apply to the current regulatory framework. European and national institutions (legislators and regulators) have to engage actively in dialogue with innovative businesses and other relevant stakeholders. Given that most developments regarding financial innovation have EU-wide impact, knowledge sharing between the various European en national institutions is highly recommended.

Providing support through national 'innovation centres'
There are several initiatives related to the establishment of a national innovation centre. This is an office that provides support to innovating businesses who want to introduce new products/services. Experiences (e.g. *project innovate* in the UK) showed that such a dedicated innovation hub is an effective way for national regulators to provide support to innovator businesses. The National Competent Authorities AFM and DNB are currently discussing such an initiative. Setting up national 'innovation centres' throughout the EU is recommended. The EU could play a role to facilitate these national innovation centres, for example by consolidating best practices from existing innovation centres.

Adapting and aligning regulatory framework throughout the EU
It is critical to monitor developments in relation to existing norms and how they apply in new situations. Where required, the current regulatory framework should be adapted. Given the potential cross-border impact of FinTech, it is recommended that most of these adaptions are aligned throughout the whole EU.

Supervisors could aim for a differentiated approach in authorising market operators. The Authority for the Financial Markets already is utilizing this possibility. The Dutch prudential supervisor DNB plans to examine whether such a differentiated approach is warranted and whether this will require regulatory amendments. Examples of a differentiated approach could be the granting of temporary authorisation for experimental services ('sandbox') and authorisations based on specific activities or specific risks of financial institutions.[6]

[6] As an example of the former, the UK Financial Conduct Authority (FCA) has announced its intention to develop a 'sandbox' for testing innovative financial products. This concept, which was developed at the request of the British government, allows businesses to test innovative products, services and business models under a 'light' supervisory regime. The FCA applies strict criteria for the use of the sandbox, including the potential benefits for consumers, the degree of innovation and the solidity of the proposal. The Monetary Authority of Singapore (MAS), the prudential supervisor in Singapore, advocates a comparable concept.

Question 23
Is further action needed to improve the application of European Anti-Money Laundering legislation, particularly to ensure that service providers can identify customers at a distance, whilst maintaining the standards of the current framework?

X Yes
No
Don't know / no opinion / not relevant

If further action is needed to improve the application of European Anti-Money Laundering legislation, particularly to ensure that service providers can identify customers at a distance, whilst maintaining the standards of the current framework, please state additional comments on possible actions (e.g. guidelines at EU level, etc.):

Answer

Recent Anti-Money Laundering legislation needs to be evaluated before further steps are taken. Points of attention from the perspective of the functioning of the internal market could be that physical identification and 'paper proof' requirements form barriers to cross-border transactions. New standards for identification and authentication etc. would be necessary.

Question 24
Is further action necessary to promote the uptake and use of e-ID and e-signatures in retail financial services, including as regards security standards?

X Yes
No
Don't know / no opinion / not relevant

If further action is necessary to promote the uptake and use of e-ID and e-signatures in retail financial services, including as regards security standards, please state additional comments on possible actions:

Answer

European standards for an interoperable framework for e-identification and e-signatures would be most helpful. It would be important to keep these standards flexible and open. To our knowledge, the European Supervisory Authorities are working on this.

There are existing initiatives that could be leveraged to that end, e.g. the eIDAS-Directive provides a framework for identification and authentication. The European Banking Authority (EBA) also is active in this field as a part of the development of Regulatory Technology Standards on strong customer authentication. The EBA is mandated by the PSD2 to develop these standards. Besides this, the Solvency II Directive requires security measures. The main challenge is to prevent too much complexity if a diversity of (new) security standards or measures is introduced. We are in favour of promoting a more integrated approach to the use of existing international security standards, e.g. ISO27001, COBIT, and NIST Cyber resilience guidelines.

Question 25
In your opinion, what kind of data is necessary for credit-worthiness assessments?

Answer

Banks to a large extent are bound by regulation to ensure responsible lending. Creditworthiness assessments often involve checking credit registers. For cross-border lending therefore, it could be useful to further develop the European interoperable framework for consumer credit registers. It could be useful to look at other examples of development of this kind of European infrastructures to learn best practices. Also, it can be useful to develop a similar system for bankruptcy registers. In casu corporate credit-worthiness assessments, initiatives in the Capital Markets Union Action Plan aimed at improving SME information are already assessing this problem.

Question 26
Does the increased use of personal financial and non-financial data by firms (including traditionally non-financial firms) require further action to facilitate provision of services or ensure consumer protection?

Yes, at Member State level
X Yes, at EU level
No
Don't know / no opinion / not relevant

If the increased use of personal financial and non-financial data by firms does require further action to facilitate provision of services or ensure consumer protection, please state additional comments on possible actions:

Answer

[ACM, AFM, DNB and the Dutch Ministry of Finance would like to stress that in order to be able to provide additional written comments on this question for technical reasons answer "Yes at EU level" was chosen instead of the preferred answer: "Don't know / no opinion / not relevant".]

The use of personal data touches on a wide range of complex issues, from technical to ethical questions regarding ownership of data, privacy and consumer choice. Clearly, the market is in a transition phase and requires a careful approach from the regulators. It is on the one hand an important innovation allowing new opportunities, which the regulator should not unduly frustrate. On the other hand, it is important that norms and rules regarding the protection of personal data, i.e. the current Privacy Directive and the future General Data Protection Regulation, apply to all firms (including financial institutions who are not necessarily leading in this change) and provide a framework for regulation, including financial regulation.

At this point in time, it would be useful to start a debate involving all parties and stakeholders. Also the issue of solidarity which underlies many insurance products could then be taken into account. Such a debate would help supervisors and regulators develop a common ground and consistent approach.

This is definitely an issue that needs to be tackled at EU level, reason being that both privacy and financial legislation are developed at EU level. We believe it would have added value to perform an analysis of how privacy legislation interacts with financial legislation with a special focus on the possible risks to consumers.

Question 27
Should requirements about the form, content or accessibility of insurance claims histories be strengthened (for instance in relation to period covered or content) to ensure that firms are able to provide services cross-border?

Yes
X No
Don't know / no opinion / not relevant

If requirements about the form, content or accessibility of insurance claims histories should be strengthened to ensure that firms are able to provide services cross-border, please state additional comments on possible actions

Answer

Regarding claims histories in the business-to-business market a European infrastructure is available. We are not aware of any problems with this infrastructure that require intervention.

Question 28

Is further action necessary to support firms in providing post-contractual services in another Member State without a subsidiary or branch office?

Yes, at Member State level
Yes, at EU level
X No
Don’t know / no opinion / not relevant

If further action is necessary to support firms in providing post-contractual services in another Member State without a subsidiary or branch office, please state additional comments on possible actions:

Answer

[ACM, AFM, DNB and the Dutch Ministry of Finance would like to stress that in order to be able to provide additional written comments on this question for technical reasons answer "NO" was chosen instead of the preferred answer "Don’t know / no opinion / not relevant".]

Post-contractual can be interpreted as services between conclusion of a contract and the denominated ending of a contract or after engaging in a contract. Financial institutions do already service clients from other member states, so the provision of services after conclusion of a contract is already possible under current legislative frameworks. Still, financial service providers make a cost-benefit-analysis to find out whether it is sensible to offer cross-border services taking into account the cross-border costs of provision of post-contractual services.

Question 29
Is further action necessary to encourage lenders to provide mortgage or loans cross-border?

X Yes
No
Don't know / no opinion / not relevant

Question 29.1
If further action is necessary to encourage lenders to provide mortgage or loans cross-border, on which particular area should the action concentrate?

Please tick all relevant boxes

Overcoming differences in private insolvency rules across the EU
Developing common EU standards on property valuation
Providing for effective access to collateral in case of consumer's default in other Member States
Ensuring clarity of administrative and notary fees charged in other Member States
Allowing for easier access to national land registers
Facilitating access to land registers cross-border
Improving availability of credit register data for creditworthiness assessments purposes
X Other
X Don't know / no opinion / not relevant

Please specify on which other particular area the action should concentrate:

Answer

<u>Evaluation of MCD</u>
To improve the internal market for mortgage credit recently the Mortgage Credit Directive (MCD) has been introduced. This directive covers many of the possible barriers. Further action should take into account the effects of the MCD. These effects must be carefully evaluated. Before this evaluation, we see no reason for further harmonisation.

Furthermore, new regulation or further action should be based on empirical testing of effectiveness. Behavioural insights teach us that consumers do not necessarily make better choices when they have more information. In order to be effective, policy making has to start from the real decision-making processes of consumers and not from assumptions about how they (should) behave.

<u>No reduction of consumer protection</u>
Further harmonisation of the rules regarding mortgage credit should not lead to a reduction of consumer protection in the Netherlands.

<u>Attention to prudential regulation</u>
A specific issue that receives attention from the supervisors is that lenders need funding in order to provide mortgages or other loans in other Member States. Deposits are an important source of funding. Since the financial crisis, some national prudential regulators have restricted the ability of lenders to invest domestic deposits abroad.[7] Regulators are inclined to restrict the activities of lenders outside the country of the regulators, in order to limit the damage caused to their own economy by a possible bankruptcy. This was also pointed out in our reaction to the green paper on Capital Markets Union and our reaction to the Call for Evidence. The banking union placed supervision at the European level. This should reduce the incentive of regulators for shielding one's own market. Significant progress has been made in achieving the banking union, but it is not yet complete, as the Single Resolution Mechanism has to be improved and a European deposit-guarantee scheme has to be created.

[7] ACM (2014), p.33.

Question 30
Is action necessary at the EU level to make practical assistance available from Member State governments or national competent authorities (e.g. through 'one-stop-shops') in order to facilitate cross-border sales of financial services, particularly for innovative firms or products?

X Yes
No
Don't know / no opinion / not relevant

If action is necessary at the EU level to make practical assistance available from Member State governments or national competent authorities in order to facilitate cross-border sales of financial services, particularly for innovative firms or products, please state additional comments on possible actions:

Answer

There are several initiatives related to the establishment of a national innovation centre. This is an office that provides support to innovating businesses who want to introduce new products/services. Experiences (e.g. *project innovate* in the UK) showed that such a dedicated innovation hub is an effective way for national regulators to provide support to innovator businesses. The National Competent Authorities AFM and DNB are currently discussing such an initiative. Setting up national 'innovation centres' throughout the EU is recommended. The EU could play a role to facilitate these national innovation centres, for example by consolidating best practices from existing innovation centres.

Also, good coordination between national initiatives is key to be effective. Evidently, the EU could play a coordinating role in aligning these regulatory approaches. Firstly, we have to avoid jurisdictional arbitrage of FinTech-companies, who will have an incentive to apply for authorization at the most 'forgiving' regulator. Secondly, we would expect that FinTech-companies would benefit from a (more or less) similar regulatory approach across the EU, as this will decrease the regulatory burden. As a result, this would facilitate cross-border activities from FinTech-companies.

Question 31

What steps would be most helpful to make it easy for businesses to take advantage of the freedom of establishment or the freedom of provision of services for innovative products (such as streamlined cooperation between home and host supervisors)?

Answer

Removing barriers is the most important step. A lot has been done with recent regulation. Next to legislative action, the idea of the 'one stop shop' for new entrants and innovative parties is an idea that could be further developed. An important aspect in setting up these 'shops' would be how these can be funded. Also, supervisory convergence on the application of these recently introduced legislative acts can help fostering cross-border provision of financial services and countervailing regulatory arbitrage.

Question 32
For which retail financial services products might standardization or opt-in regimes be most effective in overcoming differences in the legislation of Member States?

Please tick all relevant boxes

- Life insurance (This work would build on existing EIOPA research on the Pan-European Personal Pension product)
- Mortgage
- X Other
- None
- X Don't know / no opinion / not relevant

Please specify for which other retail financial services products standardisation or opt-in regimes might be most effective in overcoming differences in the legislation of Member States:

Answer

[ACM, AFM, DNB and the Dutch Ministry of Finance would like to stress that in order to be able to provide additional written comments on this question for technical reasons answer "Other" was chosen next to the preferred answer "Don't know / no opinion / not relevant".]

Standardisation of financial products should serve a clear purpose. It is not clear what problems standardised products solve and whether these problems cannot be solved more effectively by other interventions. Because the concept of financial standard products nevertheless deserves further elaboration, the Dutch government will start an experimental study to get to know the effect of introduction of standard products on consumer choice. After this study the Government decides whether it will continue research of the standard product option regarding supply side behaviour as well. We will inform the Commission about the results of this study as soon as these are available.

Perhaps standardization through a 29th regime is a good idea for technical standards (e-identification, e-signatures) and processes, so as to ensure interoperability across Europe. Standards for payment services may also be a possibility in the near future, but after the results and effects of the implementation of Payment Services Directive 2 have been evaluated.

Question 33
Is further action necessary at the EU level in relation to the 'location of risk' principle in insurance legislation and to clarify rules on 'general good' in the insurance sector?

Yes
X No
Don't know / no opinion / not relevant

If further action is necessary at the EU level in relation to the 'location of risk' principle in insurance legislation and to clarify rules on 'general good' in the insurance sector, please state additional comments:

Answer

EIOPA is collecting data on specific rules in this area per member state. Only after a careful analysis of this mapping exercise the question if further action might be needed comes into scope.

Question 34
Please provide any additional comments in the box below (5000 characters maximum):

Answer

The Netherlands strongly supports the objective of promoting the internal market by removing unjustified barriers in the internal market, because of the concrete benefits it can generate for consumers and business. Therefore we should always be looking for ways to promote the internal market.

Four remarks are in place:
1. The Netherlands thinks that before new measures are proposed a good analysis of the problem in a particular market must be made.
2. The effects of recent regulation of retail financial services should be evaluated before developing new regulation.
3. Consumer protection should not decline as a result of European harmonisation of regulation.
4. Regulatory measures should be as much as possible technology neutral. In our answers to the following questions, these four points will reappear when relevant.